

## **Draft Four – September 1, 2004**

### **Tax Policy Notice: Refunds Due to Net Operating Loss Revived**

Senate Bill 1394, effective August 28, 2004, amended section 143.121.2(d), RSMo, to allow a subtraction of net operating losses on a Missouri corporate income tax return in certain instances.

The Job Creation and Worker Assistance Act of 2002, P.L. 107-147, allowed a taxpayer to carry back a corporate net operating loss (“NOL”) five years, instead of the general two years, for federal income tax purposes. This provision was effective for tax years ending in 2001 and 2002. In 2002, Senate Bill 1248 amended section 143.121.2(d), RSMo, to require that any amended Missouri return filed after June 18, 2002, which reported a change in federal taxable income attributable to an NOL carried back more than two years, report such NOL amount as an addition to income.

The current revision to section 143.121.2(d), RSMo, provides that any amount of net operating loss taken against federal taxable income but disallowed for Missouri income tax purposes pursuant to the provisions of Senate Bill 1248 may be carried forward and subtracted from federal taxable income on the Missouri income tax return for a period of not more than twenty years from the year of the initial loss. There is no Missouri NOL deduction; however, when an NOL was deducted on a federal income tax return and was an addition to income on an amended Missouri return, it may be subtracted from federal taxable income on a future Missouri return.

For example, a corporation that incurred an NOL for its 2002 year, elected to carry back the NOL and report an NOL deduction on its 1997 federal return. Because the corporation carried the NOL back to 1997, the corporation must add the same amount on its amended 1997 Missouri return. The corporation may now subtract that amount on its 2003 Missouri return as a subtraction modification. Any amount of the 1997 addition not used on the 2003 Missouri return, may be carried forward until completely used, but in no event for more than twenty years after 2002, the year of the loss. All statutes of limitation for claiming a refund still apply.

This tax policy notice should be read in conjunction with TPN05 dated August 15, 2002.